

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

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IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE  
LITIGATION

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MDL NO. 1456  
Civil Action No. 01-12257-PBS

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THIS DOCUMENT RELATES TO ALL  
ACTIONS

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Hon. Patti B. Saris

**CLASS COUNSELS' MOTION FOR APPROVAL OF  
ADDITIONAL INCENTIVE AWARDS**

Class Counsel seeks the Court's approval to pay incentive awards to three additional Track 2 Consumer Representatives, Mariella Leday, Thomas Trusky and Agnes Swayze. Their names were inadvertently left off the prior Final Approval Order submitted by lead counsel to this Court in November. Class Counsel proposes to pay these incentive awards from the attorneys' fees the Court has previously awarded to Class Counsel, as opposed to taking additional funds from the consumer settlement fund.

This Court previously approved Leday, Trusky and Swayze as Class Representatives in its Order of August 30, 2011 (Docket No. 7775). However, class counsel accidentally failed to include them on the list of Class Representatives who were seeking awards when a revised Final Approval Order for the Track II settlement was submitted to the Court on December 2, 2011 (Docket No. 7963), *See* paragraph #19, pp 13-14. Thus the Final Approval Order signed by the Court on December 8, 2011 (Docket No. 7979) does not include these three Plaintiffs.

Attached as Exhibit A, B and C to the Declaration of John Macoretta are Affidavits from Swayze, Leday and Trusky, indicating the amount of time they spent in

the case and their requested compensation of \$1,200, \$900.00 and \$4,400.00, respectively, based on the Court sanctioned rate of \$100.00 per hour. As stated in their respective Affidavits, all three Plaintiffs did work discussing the case, reviewing documents and discussing the various changes and recalculations of the Track II settlement. All three also searched for and provided their medical records to support their status as Class Representatives.

The Court will remember that Plaintiff Agnes Swayze also served as the BMS Class Representative, and has been involved in the case for several years. Similarly, Plaintiff Thomas Trusky has been involved in the litigation for a substantial amount of time. Plaintiff Mariella Leday was added as a Class Representative only in 2011, when the number and status of Class Representatives was brought into question by objectors to the Track II settlement.

The Defendants take no position as to the relief requested by this motion.

WHEREFORE, Plaintiffs' counsel asks that the Court approve incentive awards to Agnes Swayze in the amount of \$1,200.00, Mariella Leday in the amount of \$900.00 and Thomas Trusky in the amount of \$4,400.00.

DATED: April 2, 2012

By /s/ Jeffrey Kodroff  
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**CO-LEAD COUNSEL FOR  
PLAINTIFFS**

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**CERTIFICATE OF SERVICE**

Counsel for the Plaintiffs hereby certifies that a true and correct copy of  
Counsels' Motion for Approval of Additional Incentive Awards was served electronically  
on all counsel of record on April 2, 2012.

DATED: April 2, 2012

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